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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

March 24, 2006

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 05KD-237

Kauai

Grant of Term, Non-Exclusive Easement to Brendan McNamara
for Access and Utility Purposes, Wailua, Kawaihau, Kauai,
Tax Map Key: (4) 4-1-06: within 53 & 54.

APPLICANT:

Brendon McNamara, Tenant in severalty, whose mailing address is
113 Santa Rosa Place, Santa Barbara, CA 93109

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Wailua situated at Wailua,
Kawaihau, Kauai, identified by Tax Map Key: (4) 4-1-06: within 53
& 54 as shown on the attached map labeled Exhibit A.

AREA:

Parcel 53 = 100 Square Feet, more or less.

Parcel 54 = 100 Square Feet, more or less.

ZONING:

State Land Use District: Urban
County of Kauai CZO: Residential

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution: NO

CURRENT USE STATUS:

Vacant and unencumbered.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain and repair a right-of-way over, under and across State-owned land for access and utility purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

EASEMENT TERM:

55 Years

ANNUAL RENT:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, states "Operations, repairs or maintenance of existing structures, facilities, involving negligible or no expansion or change of use beyond that previously existed."

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 3) Submit construction drawings of the driveway and culvert, designed by a licensed professional engineer registered in the State of Hawaii and should be sized for the 100-year storm event since the ditch section will lose it's carrying capacity.
- 4) Obtain a title report to ascertain ownership, where

necessary, at Applicant's own cost and subject to review and approval by the Department.

REMARKS:

Land Patent Grant 11,322 issued to Mrs. Bernice Hee on February 19, 1937 excluded a 10 foot drainage ditch right-of-way crossing over Lot 16-B and containing an area of 0.102 acre. Subsequently Lot 16-B was subdivided creating Lots 16-B-8-1 and 16-B-9-1. These Lots are still encumbered by the State owned drainage ditch, which is the main drainage way for the abutting properties.

The Applicant owns Lots 16-B-8-1 and 16-B-9-1. The Applicant is proposing to build homes on the properties and will need to construct a culvert crossing over the State owned drainage ditch for access and utility purposes.

The Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Agency comments were solicited and their statements are listed below:

County Planning Department: No objections

County Department of Public Works:

1. Based on Panel no, 212E of the Federal Insurance Rate Maps (FRIM) dated September 16, 2005, the subject property is susceptible to flooding. The flood zoning is Zone AE with a corresponding base flood elevation of 15 feet mean sea level (MSL).
2. The applicant proposes to install drainage culverts to cross the States 10 foot wide ditch right-of-way. From our aerial photo map the area is a low lying area where the existing ditch serves as an interceptor ditch and conveys the storm flows across Haleilio Road and to an existing drainage ditch that eventually feeds Wailua River. We are concerned with the culvert installation. The drainage pattern will be changed from an open channel flow condition to a concentrated type of flow where erosion may be a problem. The existing ditch may be subject to erosive velocity flows and may cause the ditch to be susceptible to failure and present flood risks to other property owners. We do not recommend the culvert installation. Perhaps the ditch crossing should be bridged across while maintaining open channel flow conditions.
3. If the culvert is installed and backfilling is allowed over the culverts, Best Management Practices (BMP's) shall be employed to the maximum extent practicable to prevent damage

by sedimentation, erosion and/or dust to streams, watercourses, natural areas and the property of others. Since the work will be occurring with the State ditch right of way, we expect the State to monitor the BMP's and grading work within the existing ditch right-of-way. We also recommend comments be solicited from the State Flood Plain Coordinator.

4. The sizing of the culvert needs to be designed by a licensed professional engineer registered to the State of Hawaii and should be sized for the 100-year storm event since the ditch section will lose it's carrying capacity. (Exhibit B)

Historic Preservation Division: No objections

Office of Hawaiian Affairs: No response

Office of Conservation & Coastal Lands: No response

Department of Health:

Temporary fugitive dust emissions could be emitted when the conduit within the requested easement is installed. At that time in accordance with Title 11, Hawaii Administrative Rules, Chapter 11-60 entitled Air Pollution control, effective air pollution control measure shall be provide to prevent of minimize any fugitive dust emissions caused by the construction work from impacting the surrounding areas. This includes the off-site roadways used to enter and exit the project. The control measures include but are not limited to the use of water wagons, sprinkler systems, dust fences, etc.

We reserved the right to impose further environmental health conditions on this project when more detailed information is provide or made available. (Exhibit C)

Commission on Water Resource Management: No objections

By letter dated January 26, 2006, Mr. Brendan McNamara acknowledged the requirements from the various agencies. (Exhibit D)

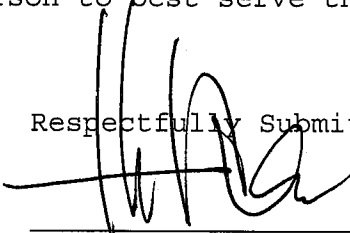
RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the subject requests to be applicable in the event

of a change in the ownership of the abutting parcels described as Tax Map Key: (4) 4-1-06: 53 and 54, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.

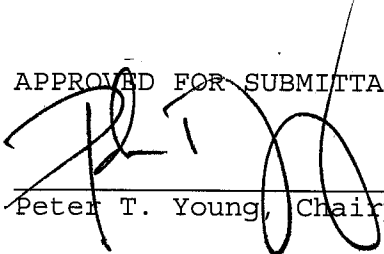
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term non-exclusive easement to Brendan McNamara covering the subject area for access and utility purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
- A. The standard terms and conditions of the most current term easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (4) 4-1-06: 53 and 54, provided that when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



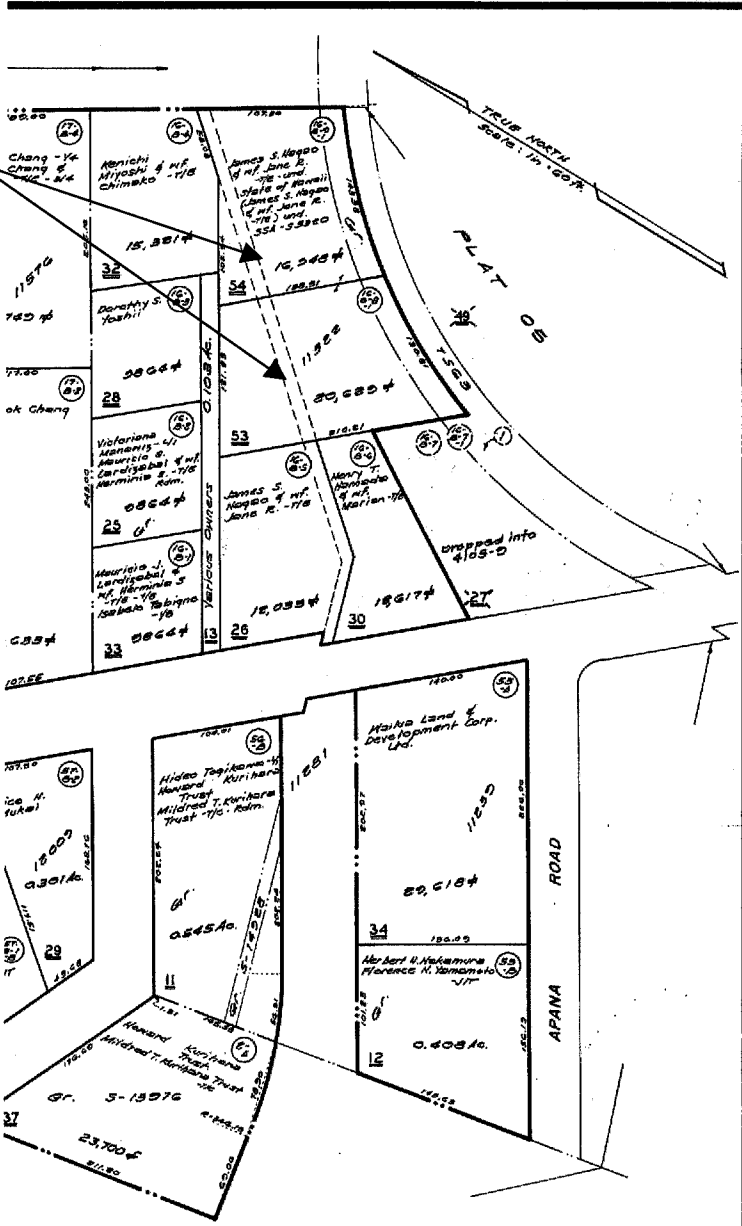
Thomas H. Oi
Kauai District Land Agent

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

SITE LOCATION



NOTE: Parcels 15, 31 thru 33 owned by
Yutaka Hamamoto, (Seiichi Yokagawa) A/S
unless otherwise noted.

PARCELS DROPPED: 5, 23, 43, 4, 87, 91,

NOTE: Parcel numbers not to be used
1, 2, 3, 24 & 36.

DEPARTMENT OF TAXATION
PROPERTY TECHNICAL OFFICE
TAX MAPS BRANCH
STATE OF HAWAII
TAX MAP

FOURTH TAXATION DISTRICT		
ZONE	SEC	BLK
1	1	1
1	1	2
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1	1	100

ZONE	SEC.	FLAT
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4	1	06
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4	1	06
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SCALE: 1 IN. = 60 FT.

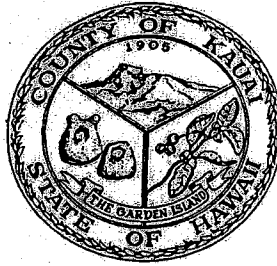
**FOR PROPERTY ASSESSMENT PURPOSES
SUBJECT TO CHANGE**

EXHIBIT A

EXHIBIT A

BRYAN J. BAPTISTE
MAYOR

GARY K. HEU
ADMINISTRATIVE ASSISTANT



DONALD M. FUJIMOTO
COUNTY ENGINEER
TELEPHONE 241-6600

LADYE H. MARTIN
DEPUTY COUNTY ENGINEER
TELEPHONE 241-6600

**AN EQUAL OPPORTUNITY EMPLOYER
COUNTY OF KAUAI**

DEPARTMENT OF PUBLIC WORKS
4444 RICE STREET
MO'IKEHA BUILDING, SUITE 275
LIHU'E, KAUAI, HAWAII 96766-1340

December 8, 2005

State of Hawai'i
Department of Land and Natural Resources
Land Division
Post Office Box 621
Honolulu, HI 96809

RECEIVED
LAND DIVISION
2005 DEC 13 A 10:00
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

**SUBJECT: REQUEST FOR GRANT OF EASEMENT FOR ACCESS AND UTILITY
PURPOSES OVER AND ACROSS STATE DITCH RIGHT OF WAY, 10 FEET
WIDE WITHIN LOTS 16-B-9-1 AND 16-B-8-1 PW11.236**

Dear Mr. Thomas Oi,

We reviewed the subject request for grant of easement for access and utility purposes. We offer the following comments relating to drainage:

A. DRAINAGE:

1. Based on panel no 212 E of the Federal Insurance Rate Maps (FIRM) dated September 16, 2005, the subject property is susceptible to flooding. The flood zoning is a Zone AE with a corresponding base flood elevation of 15 feet mean sea level (MSL).
2. The applicant proposes to install drainage culverts to cross the State's 10 foot wide ditch right of way. From our aerial photo map the area is a low lying area where the existing ditch serves as an interceptor ditch and conveys the storm flows across Haleilio Road and to an existing drainage ditch that eventually feeds Wailua River. We are concerned with the culvert installation. The drainage pattern will be changed from an open channel flow condition to a concentrated type of flow where erosion may be a problem. The existing ditch may be subject to erosive velocity flows and may cause the ditch to be susceptible to failure and present flood risks to other property owners. We do not recommend the culvert installation. Perhaps the ditch crossing should be bridged across while maintaining open channel flow conditions.

DLNR KDLO RCVD

EXHIBIT B

3. If the culvert is installed and backfilling is allowed over the culverts, Best Management Practices (BMP's) shall be employed to the maximum extent practicable to prevent damage by sedimentation, erosion and/or dust to streams, water courses, natural areas and the property of others. Since the work will be occurring with the State ditch right of way, we expect the State to monitor the BMP's and grading work within the existing ditch right of way. We also recommend comments be solicited from the State Flood Plain Coordinator.
4. The sizing of the culvert needs to be designed by a licensed professional engineer registered in the State of Hawai'i and should be sized for the 100-year storm event since the ditch section will lose it's carrying capacity.

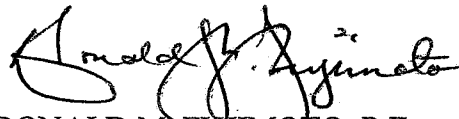
Thank you for this opportunity to provide our comments. Should you have any questions, please contact me at (808) 241-6498.

Very truly yours,



Wallace Kudo, P.E.
Chief, Engineering Division

CONCUR:



DONALD M. FUJIMOTO, P.E.
County Engineer

WK

cc Oscar Portugal, Survey
Design & Permitting Section w/attachment

LINDA LINGLE
GOVERNOR OF HAWAII



CHIYOME L. FUKINO, M.D.
DIRECTOR OF HEALTH

Dileep G. Bal, M.D., M.S., M.P.H.
Kauai District Health Officer

STATE OF HAWAII
DEPARTMENT OF HEALTH
3040 UMI STREET
LIHUE, HAWAII 96766

December 15, 2005

TO: Thomas Oi
District Land Agent

FROM: Clyde Takekuma *Clyde Takekuma*
District Environmental Health Program Chief

SUBJECT: Request for Grant of Easement for Access and Utility Purpose over and across State Ditch Right of Way, 10 feet wide Within Lots 16-B-9 and 16-B-8-1 (TMK: (4) 4-1-06: 53 & 54), Brendan McNamara

Based on our review of the application, we offer the comments below for your consideration.

Temporary fugitive dust emissions could be emitted when the conduit within the requested easement is installed. At that time in accordance with Title 11, Hawaii Administrative Rules, Chapter 11-60.1 entitled Air Pollution Control, effective air pollution control measures shall be provided to prevent or minimize any fugitive dust emissions caused by the construction work from impacting the surrounding areas. This includes the off-site roadways used to enter and exit the project. The control measures include but are not limited to the use of water wagons, sprinkler systems, dust fences, etc.

We reserve right to impose further environmental health conditions on this project when more detailed information is provided or made available.

Please call me at 241-3323 if you have any questions.

PM1:37:47

DEC 19 '05

EXHIBIT C

DLNR KDLO RCI

Thomas Oi
State of Hawaii, DLNR
3060 Eiwa Street, room 306
Lihue, HI 96766
(808) 274-3491 (808) 274-3438 fax

re: Request for Grant of Easement for Access and Utility Purposes over and across State Ditch ROW,
10' wide within Lots 16-B-9 and 16 B-8-1 (TMK 4-1-06: 53&54), Brendan McNamara

01/26/06

Dear Mr. Oi,

Thank you for faxing over the various agencies requirements for my Request for Grant of Easement for Access and Utility Purposes. I acknowledge the requirements. Please proceed with any additional steps to grant the easement.

Best regards,



Brendan McNamara
113 Santa Rosa Place
Santa Barbara, CA 93109
sbmodern@hotmail.com

cell 805 259-6194
office 805 564-6916
fax 805 564-6916

PM1:29:55

JAN 30 '06

DLNR KDLD RCVD

EXHIBIT D